1950

File No. O. Village Sanitation/50
Legal Department

A BRANCH

Subject:— Opinions under the Bombay Village Sanitation Act 1889

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Office of the R.L.A.

The question referred to the R.L.A. by the Public Works Department relates to the expansion of the Sanitary Committee appointed at Port Okha under the Baroda Arogya Rakshana Niyam.

2. The Public Works Department in its note at page 24 ante suggests as under :-

" If the arrangement for sanitation (at Okha) made through the Committee having powers to levy taxes (municipal) are legally above reproach, the best solution would be

(1) to expand that committee to give wide representation to the public, or

(2) to establish a new elected committee with Port Officer as President (Ex-officio) managing the sanitation services with a fixed grant from the Government equivalent to the maintenance of roads, lighting etc.

3. The Okha Sanitary Committee was a body constituted under the Baroda Arogya Rakshana Niyam which corresponds to the Bombay Village Sanitation Act, 1889. Under paragraph 6(iii) of the Baroda State (Application of Laws) Order, 1949 the said committee has to be deemed as constituted under the Bombay Village Sanitation Act, 1889 with effect from 30-7-49. The Baroda Arogya Rakshana Niyam and the orders passed by the former Baroda Government relating to the constitution and powers of the said committee stand repealed with effect from 30-7-49 by virtue of paragraph 5(ii) of the Baroda State (Application of Laws) Order, 1949. In the circumstances from 30th July 1949 the Okha Sanitary Committee is governed by the provisions of the Bombay Village Sanitation Act, 1889.

4. From the notification in Gujarati at pages 11 and 13 ante it will appear that the taxes in question have been imposed by the said Committee with effect from 1.8.49. So the question does not appear to be of continuing the taxes imposed prior to 30.7.49 but of the legality of the taxes imposed with effect from 1.8.49. At the time of imposing the said taxes the committee was governed by the Bombay Village Sanitation Act, 1889 and under that Act the Committee was not competent to impose the taxes in question. The levy of these taxes would not therefore be lawful.

5. The question of expanding the Committee will be solved if Part III of the Village Sanitation Act is extended to Part Okha and a Sanitary Board established at Okha. Since however the sources of revenue are limited under the Bombay Village Sanitation Act, Government may immediately consider the question of application of the Bombay Village Panchayat Act or the Bombay District Municipal Act to the area and to regularise the levy of the present taxes.

Sd/- P.M.Lad.
5.7
Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 9399, dated 6 th July 1950.

V.M.D./18.6
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R. L. N. 19781. dt.31.10.50

Please Please see R.L.A.'s opinion No. 9359 dated 6th July 1950 and P.W.D. note dated 27.10.50.

On the previous reference regarding expension of the Sanation Committee at Part Okha R.L.A. advised, inter alia, that at the time of imposing taxes such as shop tax, assessment and hotal tax etc. (i.e. from 1.8.49) the Committee was governed by the Bombay villages Sanitation Act, 1889 and under that Act the Committee was not competent to impose the taxes in question and that therefore the levy of these taxes could not be lawful. He also advised to consider the question of application of the Bombay village Panchayat Act or the Bombay District Municipal Act to the area and to regularise the levy of the present taxes. Regarding the legal position of the sub-committee to levy the taxes till either of the aforesaid Acts is applied to the area, it is observed by the P.W.D., that when the Committee itself has no legal standing, it would be perhaps illegal for the Committee to continue to levy the taxes. According to the P.W.D. it would perhaps meet the case, if either of the Acts is applied to the area with effect from 1.8.49 provided it is legally justified. R.L.A. is requested to advise.

Sd/- P.M.Lad.
2.11

Remembrancer of Legal Affairs.

U. S.R. to P.W.D. No. 15342, dated 3rd November 1950.

P.W.D./ 18.6
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Office of the A.G.A.

The continuance of the levy of the taxes as has stated by the Public Works Department would be illegal; but neither of the Acts can be applied to the areas retrospectively as suggested by Public Works Department.

Sd/- P.H.Lad.
2.11

Remembrancer of Legal Affairs.

U.O. to P.W.D. No. 15342, dated the 3rd November 1950.

P.W.D./ 18.6
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